(10)

No. 93-5770

In The
Supreme Court of the United States
October Term, 1993

ROBERT EDWARD STANSBURY,
Petitioner,

vs.

STATE OF CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

BRIEF AMICUS CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., IN SUPPORT OF NEITHER PARTY.

(List of Counsel on Inside Front Cover)

---

10 pp

OF COUNSEL:
BERNARD J. FARBER, ESQ.
5009 West Windsor
Chicago, Illinois 60630-3926

Counsel for Amicus Curiae
FRED E. INBAU, ESQ.
John Henry Wigmore Professor
of Law, Emeritus
Northwestern University
School of Law
Chicago, Illinois 60611

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Avenue
Suite 1008
Chicago, Illinois 60656

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue,
Suite 100
Glen Ellyn, Illinois
60137-4900
Tele and Fax: (708) 858-6392

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. 93-5770

In The
Supreme Court of the United States
October Term, 1993

ROBERT EDWARD STANSBURY,
Petitioner,
vs.
STATE OF CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

BRIEF AMICUS CURIAE
OF
AMERICANS
FOR
EFFECTIVE LAW ENFORCEMENT, INC.,
IN SUPPORT OF NEITHER PARTY.

This Brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.

INTEREST OF AMICUS CURIAE

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* over eighty-five times in the Supreme Court of the United States and over thirty-five times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

In this case *amicus curiae* seeks to bring before this Court the view of law enforcement at the state and local level on the law with respect to the issue of custody under *Miranda v. Arizona*, 384 U.S. 436 (1966), based upon our many years of experience as a national professional organization interacting with law enforcement agencies directly through our training programs, publications, and technical assistance.

ARGUMENT

DEFENDANT WAS NOT IN CUSTODY WITHIN THE PURVIEW OF *MIRANDA v. ARIZONA* UNTIL SUCH TIME AS HE MENTIONED THAT HE HAD DRIVEN A CAR MATCHING A DESCRIPTION OF A CAR REPORTED TO HAVE BEEN USED IN THE COMMISSION OF THE CRIME; THIS COURT SHOULD RETAIN THE OBJECTIVE REASONABLENESS TEST FOR DETERMINING *MIRANDA* CUSTODY, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE SUBJECTIVE INTENT OF LAW ENFORCEMENT OFFICERS, WHERE RELEVANT.

The California Supreme Court ruled in this case, *People v. Stansbury*, 4 Cal.4th 1017, 17 Cal.Rptr.2d 174, 846 P.2d 756 (1993), that where the defendant was asked by the police to come to a police station to give a statement as a potential witness to the abduction and murder of a child, and he did so freely and without any indicia of restraint by the police who did not believe at the time that he was a suspect, he was not "in custody" at the police station within the purview of *Miranda* until such time as he made an incriminating admission during the interview. The California Supreme Court noted the "[d]efendant was very cooperative and agreed to come in . . . for an interview. He was given the choice of whether to accept a ride with the police or to drive his own car." 846 P.2d at 776.

While the California court considered a number of factors in reaching its conclusion—including the fact that the police did not consider the defendant to be a suspect until he made the statement noted—it is clear that the court employed an objective reasonableness test centering on what a reasonable person in the position of the defendant would have believed concerning his position at the time. The court correctly

applied the rule adopted by this Court to the effect that *Miranda* warnings are required prior to questioning only when a person has been taken formally into custody *or* otherwise deprived of his liberty in any significant way, *or* led to believe as a reasonable person, that he has been thus deprived. *Beckwith v. United States*, 425 U.S. 341 (1976); *Oregon v. Mathiason*, 429 U.S. 492 (1977); *California v. Beheler*, 463 U.S. 1121 (1983); *Berkemer v. McCarty*, 468 U.S. 420 (1984).

Amicus submits that the experience of the last two decades has shown in thousands of police interrogations that the objective reasonableness test of *Beckwith-Mathiason-Beheler-McCarty* is a reasonable and workable approach to determining the issue of *Miranda* custody. Our experience as a national professional organization interacting with law enforcement agencies directly through our training programs, publications, and technical assistance, has demonstrated that the test is a form of "bright line" guidance that law enforcement officers can readily understand and apply. We ask the Court not to change the test as it presently exists.

Amicus has no quarrel with the California court's consideration that the officers' knowledge and intent would be relevant to a finding of *Miranda* custody. That factor would be a part of the totality of the circumstances in many a typical case. We would not think, however, that an officer's subjective beliefs would carry weight unless they were actually conveyed to the person by word or deed, in applying the reasonable person test. At any rate, it is clear from the court's opinion that it looked to the totality of the circumstances—*not one factor in isolation*—in reaching its conclusion that a reasonable person in the defendant's position would not believe that he had been deprived of his liberty in any significant way until the damaging remark was made by defendant.

The mere fact that a witness to a crime is interviewed at a police station should not give rise to any special requirement of *Miranda* warnings simply because the atmosphere may be "potentially intimidating." This Court has never adopted such a position and it would not be necessary to do so since the objective test applied by this Court adequately covers both potential witnesses and actual suspects. ". . . [T]he ultimate inquiry" this Court has said, "is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983), quoting from *Oregon v. Mathiason*, *supra*, 429 U.S. at 495.

Amicus submits that every police-citizen encounter has some potential for being "intimidating." That is not, however, the test for *Miranda* custody. We believe that this Court should retain the "bright line" rule it has developed for determining that issue, while reaffirming that courts are to continue considering the totality of the circumstances in resolving the issue, including—*where relevant*—the knowledge and beliefs of law enforcement officers.

CONCLUSION

Amicus urges this Court to affirm the decision of the court below on the basis of the precedents of this Court and sound judicial policy.[1]

OF COUNSEL:
BERNARD J. FARBER, ESQ.
5009 West Windsor
Chicago, Illinois 60630-3926

FRED E. INBAU, ESQ.
John Henry Wigmore Professor
of Law, Emeritus
Northwestern University
School of Law
Chicago, Illinois 60611

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Avenue
Suite 1008
Chicago, Illinois 60656

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue,
Suite 100
Glen Ellyn, Illinois 60137
Tele and Fax: (708) 858-6392

Counsel for Amicus Curiae

---

[1] The present case is another example of why *Miranda v. Arizona* should be overruled, or modified, as suggested by *amicus* in its recent brief before this Court in *United States v. Green*, #91-1521. In our brief considerable documented evidence was presented to establish that an inordinate amount of valuable judicial time and effort has been expended on the many issues—such as the one in the instant case—that were created by the *Miranda* mandate. See "Miranda v. Arizona—Is It Worth the Cost?," 24 *Calif. Western Law Rev.* 185-200 (1987). The law enforcement community and the general public have sustained serious losses as well.